IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10225 of 1993

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : YES

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

HEMENDRAKUMAR R PATEL

Versus

HEIR OF MAGANBHAI DAJIBHAI : MOTIBHAI MAGANBHAI PATEL

Appearance:

1. Special Civil Application No. 10225 of 1993

MR AR MAJMUDAR for Petitioner No. 1

MS DS PANDIT AGP for Respondents No. 2-3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 30/10/2001

ORAL JUDGEMENT

Heard Mr.A.R.Majmudar, learned advocate appearing on behalf of the petitioner and Ms.D.S.Pandit, learned AGP for respondent Nos.2-3. Though served, none appeared for respondent No.1.

#. In the present petition, this Court has issued RULE on 19th April, 1994 and granted interim relief in favour of the petitioner.

#. The brief facts giving rise to the present petition are that the petitioner is the owner of land situated at village Kamalapura, Block No.103, admeasuring 5 acres and 13 gunthas. The respondent No.3 - Mamlatdar in Ganot Case being Case No.2862/1983 by order dated 13th December, 1985 ordered that the transfer in favour of the present petitioner was in contravention of the provisions of the Bombay Tenancy Act and therefore, declared that the sale is invalid under the provisions of Section 84[c] of the Bombay Tenancy Act. The petitioner being aggrieved of the said order, preferred appeal before the Deputy Collector, Dahod. However, the Deputy Collector by his order passed in Appeal No.11/1986 set aside the order passed by the Mamlatdar and the matter was remanded back again to the Mamlatdar. Thereafter, in remand proceedings, the Mamlatdar came to conclusion that the transfer is illegal and sale was declared invalid and accordingly declared that sale is illegal on the ground that the sale is effected contrary to the tenancy law as the petitioner is not staying within the radius of 15 kms of the area. Again, against the said order of the Mamlatdar, appeal being Appeal No.3/87 was preferred before the Deputy Collector and the Deputy Collector, Dahod had also dismissed the appeal and confirmed the order passed by the Mamlatdar. Aggrieved by the order of the Deputy Collector, Dahod, the petitioner preferred Revision Application being TEN.B.A. No.371 / 87 before the Gujarat Revenue Tribunal. However, the said revision was also dismissed for default on 25-2-1991. Therefore, the petitioner has preferred Restoration Application being TEN.D.A. No.69/92 before Gujarat Revenue Tribunal and thereafter the Gujarat Revenue Tribunal by order dated 30th July, 1993 also rejected the said restoration application mainly on the ground that the restoration application was without any genuine ground. Therefore, the petitioner has challenged the order passed by the Gujarat Revenue Tribunal rejecting the restoration application in the present petition.

#. Learned advocate Mr.A.R.Majmudar has submitted that the tribunal has committee gross error in rejecting the restoration application. He submitted that the tribunal had not communicated the order passed against the petitioner and therefore the petitioner was not aware of the said order. He also submitted that the Advocate representing the petitioner before the Tribunal had not

informed as to any order passed against the petitioner nor he had remained present before the tribunal. He also submitted that no delay condonation application was preferred by the petitioner but on oral request was made by the petitioner or his advocate before the tribunal. However, Mr.Majmudar has strongly emphasised that such adamant technical approach ought not have adopted by the tribunal while rejecting the restoration application submitted by the petitioner. He also submitted that the petitioner being unaware of the order and was sick at the relevant time, he could not file the application in time. His submission before this Court is that all these aspects ought to have been taken into consideration by the tribunal therefore, he submitted that view taken by the tribunal is contrary to settled principles of law and the same is required to set aside by this Court.

#. Learned AGP Ms.D.S.Pandit appearing on behalf of the respondents - State Authorities has submitted that the tribunal has considered all the details and passed reasoned order while rejecting the restoration application. She also submitted that there is no specific observation made by the tribunal that the petitioner is indolent and careless person therefore, such person is not entitled to any relief by way of restoring the main revision application. She also submitted that if revision application is restored then, it will adversely affect the rights of the private party and therefore, the tribunal has rightly appreciated the facts on record while rejecting the restoration application and therefore no interference is called for by this Court as the Tribunal has not committed any apparent error while rejecting the restoration application.

#. I have considered the submissions made by learned advocates for the parties. The tribunal has considered the restoration application which is admittedly filed belatedly that is after period of one year and seven months. However, no affidavit or application for condonation of delay was preferred along with restoration application. Perusal of the order clearly suggests that the tribunal has observed that oral request made by the advocate appearing for the petitioner before the tribunal cannot be considered. However, though the tribunal has considered sickness of the petitioner but this aspect was taken into consideration only for that limited period but the tribunal has ultimately rejected the application by not condoning the delay in filing the restoration application.

#. This Court has also taken into consideration the order passed by the tribunal. The view taken by the tribunal apparently, in view of this Court, seems to be based on the very technical approach and the same can be said to be technical view. If the petitioner has already engaged an Advocate on his behalf and if said advocate has not informed the party - petitioner as to the result of the revision application in time and one more aspect of the matter, when the petitioner was sick for some time and on account of all these aspects, if no effective steps were taken for filing the restoration application within limitation period, in such situation, the observations of the Apex Court in case of RAFIQ AND ANOTHER VS. MUNSHILAL AND ANOTHER reported in AIR 1981 SC pg.1400, require to be taken into consideration. The observations of Apex Court in aforesaid decision made in para-3 are quoted as under :-

"The disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not only not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. It is no part of his job. Mr. A.K. Sanghi stated that a practice has grown up in the High Court of Allahabad amongst the lawyers that they remain absent when they do not like a particular Bench. Maybe he is better informed on this matter. Ignorance in this behalf is our bliss. Even if we do not put our seal of imprimatur on the alleged practice by dismissing this matter which may discourage such a tendency, would it not bring justice delivery system into disrepute. What is the fault of the party who having done everything in his power and

> expected of him would suffer because of the default of his advocate. If we reject this appeal, as Mr. A.K. Sanghi invited us to do, the only one who would suffer would not be the lawyer who did not appear but the party whose interest he represented. The problem that agitates us is whether it is proper that the party should suffer for the inaction, deliberate omission, or misdemeanour of his agent. The answer obviously is in the negative. Maybe that the learned advocate absented himself deliberately or intentionally. We have no material for ascertaining that aspect of the matter. We say nothing more on that aspect of the matter. However, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted. Therefore, we allow this appeal, set aside the order of the High Court both dismissing the appeal and refusing to recall that order. We direct that the appeal be restored to its original number in the High Court and be disposed of according to law. If there is a stay of dispossession it will continue till the disposal of the matter by the High Court. There remains the question as to who shall pay the costs of the respondent here. As we feel that the party is not responsible because he has done whatever was possible and was in his power to do, the costs amounting to Rs.200/should be recovered from the advocate who absented himself. The right to execute that order is reserved with the party represented by Mr. A.K.Sanghi."

#. Thus, considering the observations of the Apex that that the disturbing feature of the case is that under our present adversary legal system where the parties generally appear through their advocates, the obligation of the parties is to select his advocate, brief him, pay the fees demanded by him and then trust the learned advocate to do the rest of the things. The party may be a villager or may belong to a rural area and may have no knowledge of the court's procedure. After engaging a lawyer, the party may remain supremely confident that the lawyer will look after his interest. At the time of the hearing of the appeal, the personal appearance of the party is not required but hardly useful. Therefore, the party having done everything in his power to effectively participate in the proceedings can rest assured that he has neither to go to the High Court to inquire as to what is happening in the High Court with regard to his appeal

nor is he to act as a watchdog of the advocate that the latter appears in the matter when it is listed. The apex court has also observed that what is the fault of the party who having done everything in his power and expected of him would suffer because of the default of his advocate. With above observations, the Apex Court has held that however, we cannot be a party to an innocent party suffering injustice merely because his chosen advocate defaulted and accordingly the appeal was allowed.

#. Therefore, considering the observations of the Apex Court so also considering the facts and circumstances of the case on hands, which clearly suggest that the petitioner who had engaged advocate and the defaulted advocate has not informed the petitioner as to the result of the revision application in time and during this period since the petitioner was sick, could not prefer the restoration application in limitation period. However, restoration application was admittedly preferred after period of one year and seven months. Moreover, considering the aspect that though oral request was made by the advocate to condone the delay, in such circumstances, the Tribunal ought not to have rejected such oral request made by the advocate for condoning the delay. Considering all these aspects of the matter and considering the fact that the advocate engaged by the petitioner before the Tribunal had not informed the petitioner in time and therefore, the restoration application could not be filed within time, in view of this Court, highly technical approach adopted by the Revenue Tribunal is not just and proper. Normally, instead of rejecting application merely on delay aspect, in such case, the better course would be to examine the matter on merits. Therefore, this Court is of the opinion that the Tribunal has committed error in taking technical approach for not condoning the delay in filing restoration application and hence, the order passed by the Tribunal requires to be interfered with by this Court in the interest of justice.

#. In the result, present petition succeeds and the same is allowed accordingly. The order impugned in this petition passed by the Gujarat Revenue Tribunal in Restoration Application No.69 / 1992 dated 30th July, 1993 is hereby quashed and set aside. Consequently, the Restoration Application No.69/1992 would stand allowed. Therefore, it is directed to the Gujarat Revenue Tribunal to restore the Revision Application No.37 / 1987 to its original file and to decide the same in accordance with law within period of three months from the date of

receiving the writ of this order passed by this Court. However, it is further directed that the parties to maintain status quo till the revision application is finally decided by the Gujarat Revenue Tribunal as directed by this Court.

Date : 30-10-2001 [H.K.Rathod, J.]

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